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Item No. 1

File No. _____

SUNSHINE ORDINANCE TASK FORCE

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Completed by: Chris Rustom

Date: Sept 15, 2010

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

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SUNSHINE ORDINANCE TASK FORCE 2009-10 ANNUAL REPORT

The Ordinance and the Task Force

The Sunshine Ordinance Task Force was established by the Sunshine Ordinance (Administrative Code Sections 67.1 et seq.) to foster City government transparency and accountability.

The Ordinance was originally enacted in 1993 by the Board of Supervisors and then-Mayor Frank Jordan. The current Ordinance was approved as Proposition G by City voters in November, 1999.

The Task Force has 11 seats for voting members. All of them are filled as this report is being written. The members are Chair Richard Knee; Vice-Chair Bruce Wolfe; Sue Cauthen; Hanley Chan; Nicholas Goldman; Hope Johnson; James Knoebber; Suzanne Manneh; David Snyder; Allyson Washburn; and Marjorie Ann Williams.

Members are appointed by the Board of Supervisors, and the appointments receive Mayoral approval. Members serve for two-year terms, without pay or expense reimbursement. There is no tenure limit for serving on the Task Force.

The Task Force has seats designated for ex-officio, non-voting members from the offices of the Mayor and the Clerk of the Board of Supervisors. The former is vacant; LaTonia Stokes serves in the latter.

The Task Force is responsible for monitoring the effectiveness of the Ordinance and recommending ways to improve it. The goals are to maximize citizens' access to City records that are by law disclosable and to City meetings that are by law open to the public; and to help City officials, employees and entities find ways to meet those goals in ways that are operationally and economically efficient and effective.

The Task Force normally meets on the fourth Tuesday of each month at 4 p.m. Committees of the Task Force normally meet on various days during the second week of each month.

The length of Task Force and committee meetings varies with the amount of business before them. Often, a major determinant for meetings of the Task Force, and of the Complaint, the Compliance & Amendments and the Education, Outreach & Training Committees is the number of sunshine-related complaints before them.

It is important to note that the number of complaints that the Task Force Administrator receives is substantially higher than the number of complaints that goes to the Task Force for adjudication. This is because the Administrator is often able to bring the parties in interest together for satisfactory clarification and resolution.

Long-Term Issues

The Task Force also deals with long-term issues. The current list includes:

☼ Amending the Ordinance. The Task Force believes some reforms are necessary to enable it to do its job more effectively. For a variety of reasons, the Task Force could not complete deliberations on the proposed amendments in time to get the reform package on the November, 2010, ballot. The target date is now November, 2011. Because the current Ordinance was enacted by the voters, amendments to it also must go on the ballot. Only in certain, narrowly defined cases may the Board and the Mayor amend the Ordinance.

☼ Ethics Commission handling of sunshine-related complaints. The Commission has invited the Task Force's input in developing a new set of policies in this area. The Task Force has long been troubled with the way the Commission has been handling matters that the Task Force has referred to the Commission. The Task Force believes that the Commission has erroneously placed decisions on these matters with staff when the Commission itself should be making the determinations. The Commission staff has dismissed all of the roughly 15 complaints on which the Task Force has requested enforcement for willful violation of the Ordinance. To the best of the Task Force's knowledge, the staff has taken these actions often without reading through the entire body of material relevant to a given case and never in consulting with the Task Force or an original complainant.

☼ Proposed Sunshine Awards. The Task Force is weighing whether to give an award(s) annually to individual(s) and entity(ies) whose actions increase City Hall transparency and accountability. Consensus was awaited as this report was being written.

Issues for the Board of Supervisors to Consider

The Task Force believes some clarifications regarding statements and perceptions about the procedures and resources needed to manage the Task Force can help to inform future decisions regarding the Task Force's annual budget. It seems there is a perception that "action minutes" can be used for a quasi-judicial body. The Task Force does not conduct business in the same way that the Board of Supervisors and its committees do. Evidence and testimony presented to the Board and its committees are meant to shape policies that will revise or be added to existing code; thus "action minutes" are pretty much the standard for policy bodies and the results are what ultimately matter.

The operational process for the Task Force is quite different. It is, again, a quasi-judicial body that, when receiving a sunshine-related complaint, takes specific testimony and evidence from the complainant, from the respondent, and from persons supporting either party in interest. Such hearings also include public comment. All of the foregoing and the resulting finding for the complainant or the respondent go into a file that is at times quite voluminous. In addition, the docket must be available for review, as it serves as "case law" under the Sunshine Ordinance.

There are other City policy bodies that operate much like the Task Force – including but not limited to the Rent Board, Ethics Commission and Appeals Board – all of which have budgets

and staffs far larger than those of the Task Force.

The Task Force and its staff continually look for ways to improve operational and economic efficiencies, both at meetings and in record-keeping. At the same time, the Task Force strongly believes that maintaining staffing, equipment, supplies and facilities – and thus, the budget – at least at current levels is of paramount importance. The Task Force notes with appreciation that the Board and the Mayor intend to do that for fiscal 2010-11. But going forward, it is important to remember that reducing the Task Force's budget based on the perceptions or presentations would produce no net benefit and may violate the Sunshine Ordinance provision regarding staffing and resource requirements. Ordinance Section 67.31 states in part, "The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties."

The Task Force encourages the Board to consult with the Clerk of the Board, Angela Calvillo, and with Task Force Administrator Chris Rustom when questions arise about what the Task Force needs in staffing, facilities, equipment and supplies to meet its responsibilities.

A final note: The Task Force has for more than five years been requesting live videocasting of its meetings on the City's cable channel, SFGOV-TV, and on the City's web site. The Task Force has proved a viable, vital resource for the public, and its activities are sufficiently instructive as to be a compelling subject for regular videocast. And this should not be difficult, as the Task Force and its committees meet regularly in hearing rooms each equipped with at least one video camera.

Again, the Task Force strongly urges that Board and the Mayor keep the Task Force's budget at least at its current level, and recognize the Task Force's needs and requirements under the Sunshine Ordinance for full-time staff and resources that will enable it to continue providing services to the City and the public.

Respectfully submitted,
Richard A. Knee, Chair
Bruce Wolfe, Vice-Chair

Sunshine Ordinance Task Force Complaint Committee 2009-10 Annual Report

The Complaint Committee determines whether the Task Force has jurisdiction on a given complaint, helps complainants focus their complaints, monitors the complaint process and makes recommendations to the Task Force regarding how complaints should be handled.

The Complaint Committee comprises three members: Chair Nicholas Goldman, Richard Knee and James Knoebber. Member Knee on July 1 replaced Doyle Johnson, who is no longer on the Task Force. Member Johnson consistently showed genuine interest in ensuring informed and fair decisions on the issues that came before the Committee and the full Task Force.

The Complaint Committee normally meets on the second Tuesday of each month at 3:30 p.m.

In 2009 the Complaint Committee heard 22 complaints. It should be noted that the full Task Force held hearings on many more complaints than these. This is because the complaint underlying a particular hearing may not necessarily come before the Complaint Committee. This happens if jurisdiction is not contested. Following are the matters that came before the Complaint Committee in 2009, by month:

January

Witt v. Taxi Commission
Anonymous Tenants v. DBI

February

Anonymous v. City Attorney's Office

March

Rita O'flynn v. DTI
David Larkin v. DPW
Charles Pitts v. Health Dept.

April

Banks v. SF HIV Health Svcs. Planning Council

May

Anonymous v. MTA

June

Weston v. DHS
Leung & Fong v. DHS
Xex v. DHS
Xex v. DHS

July

Grogan v. Police Commission

Maionchi v. Dept. Rec Park
Tomina v. DBI

August

Kinnard v. HRC
Mabbutt v. Dept. Rec Park

September

No meeting

October

Mollinedo v. Zoological Society
Garcia v. Entertainment Commission

November

Lawrence v. MTA

December

Banks v. DPH

In 2010, the Complaint Committee has heard 13 complaints:

March

Lawrence v. MTA
Datesh v. Arts Commission
Daly v. Mayor's Office (Yarne and Arellano)

April

Bretherton v. Emergency Management Dept.

May

Crawford v. City Attorney's Office
Datesh v. Arts Commission
Robinson v. Rent Board
Hartz v. Rent Board (2 complaints)
Kinnard v. Human Rights Commission

June

Ptashmaya v. Adult & Aging Services Dept.
Xex v. Children & Families Commission
Dumont v. Recreation & Parks Dept.

Respectfully submitted,
Nicholas Goldman, Chair

Sunshine Ordinance Task Force Compliance & Amendments Committee 2009-10 Annual Report

The Compliance & Amendments Committee (CAC) takes the lead in monitoring the effectiveness of the Sunshine Ordinance and in proposing revisions thereto. In addition, the CAC follows up on Orders of Determination that the Task Force issues when finding violations of the Ordinance, investigating whether the Orders have been met and recommending when necessary that the Task Force refer cases of willful violation to entities empowered to impose penalties.

The CAC comprises five members: Chair Allyson Washburn, Nicholas Goldman, Richard Knee, David Snyder and Bruce Wolfe. Mr. Snyder replaces Erica Craven-Green on the CAC and on the Task Force, holding the Task Force seat designated for an attorney nominated by the Society of Professional Journalists, Northern California Chapter. Ms. Craven-Green contributed extensive knowledge of statutory and case law, and of their applicability to matters that came before the CAC, which she chaired from July, 2009, to April, 2010, and the Task Force.

The CAC normally meets the second Tuesday of each month at 4 p.m.

The CAC in March, 2010, completed a long series of exhaustive public deliberations on proposed amendments to the Sunshine Ordinance, and sent the package for in-public review, still in progress, by the Task Force.

The CAC is taking the lead in developing guidelines for the Task Force on public access to electronic records, including backup, storage and retrieval. This is a long, complex process, given the immense volume of information to be gathered on available and evolving technology, work in progress by the Committee on Information Technology, and best practices in other jurisdictions around the country.

The CAC in 2009 followed up on 20 Orders of Determination that the Task Force issued after finding violations of the Sunshine Ordinance:

February

Crossman v. Dept. of Telecommunications & Information Services (DTIS): Partial compliance found; matter continued.

Xex v. Arts Commission: Compliance found. No further action taken.

May

O'Flynn v. Dept. of Technology (formerly DTIS): Continued.

Arce & Brooks v. SFPUC: Referred back to Task Force with recommendation to refer to Ethics Commission due to willful violation.

Larkin v. Dept. of Public Works: Referred back to Task Force with recommendation to refer to Ethics Commission due to willful violation.

Anonymous Tenants v. Dept. of Building Inspection: Continued to July meeting.

June

O'Flynn v. Dept. of Technology (continued from previous month): Ms. O'Flynn could not attend; matter continued.

SORE v. SFPUC: Neither party was present or represented. Matter was deemed concluded.

July

O'Flynn v. Dept. of Technology (continued from previous month): CAC determined it could take no further action.

Anonymous Tenants v. Dept. of Building Inspection (continued from May meeting): Continued.

August

Anonymous Tenants v. Dept. of Building Inspection (continued from previous meeting): Compliance found. Matter concluded.

September

Maionchi v. Dept. of Recreation & Parks: Compliance found. No further action taken.

Kinnard v. Human Rights Commission: Continued.

Mabbutt v. Dept. of Recreation & Parks: Good-faith effort by both sides found. Matter taken off calendar.

Warfield v. Public Library: Continued.

Warfield v. Board of Appeals: Respondent not present or represented. Matter continued.

October

Cauthen v. Library Commission: Referred to Task Force with recommendation of referral to Ethics Commission due to willful violation by Commission President Jewelle Gomez.

Kinnard v. Human Rights Commission (continued from previous month): There was tentative indication of compliance. CAC asked complainant to meet with respondent and inform the CAC if Order of Determination had not been met. CAC took no formal action.

Mabbutt v. Dept. of Recreation & Parks: CAC encouraged parties to work together; took no formal action.

Warfield v. Public Library (continued from previous month): Agreed CAC Chair Craven-Green would write a letter to the Library expressing displeasure at its failure to appear at hearings, and asking why documents were not provided and why an unusable copy of a draft was provided after five days. Library was also to respond as to when the original of a requested blueprint was deleted and whether it could provide full-sized copies. If the Library does not respond within five days following receipt of the letter, the CAC was to refer matter to Task Force.

Warfield v. Board of Appeals (continued from previous month): Matter referred to Task Force with recommendation to refer it to Ethics Commission due to willful violation.

O'Flynn v. Mayor's Office of Housing: Further information needed; matter continued.

Evans v. Ella Hill Hutch Community Center: Further information needed; matter continued.

Evans v. African-American Art & Culture Complex: CAC Chair Craven-Green said she would urge respondent produce a list of employees and other documents sought by complainant. She would also inform the Arts Commission that it needs to produce documents it may have on the Art and Culture Complex. No further action.

November

O'Flynn v. Mayor's Office of Housing (continued from previous month): Information from respondent needed; matter continued.

Mollinedo v. Zoological Society: Continued with instruction to respondent to produce minutes that had been redacted.

Warfield v. Clerk of the Board: Compliance found. No further action.

Warfield v. Clerk of the Board: Continued with instruction that respondent provide written policy regarding personal-information redactions.

December

Kinnard v. Human Rights Commission: Consensus to correspond with respondent for clarification on pending issues.

O'Flynn v. Mayor's Office of Housing (continued from previous month): Non-compliance and willful violation found; matter referred back to Task Force.

Mollinedo v. Zoological Society (continued from previous month): Compliance found. No further action.

The CAC has in 2010 followed up on 10 Orders of Determination that the Task Force issued after finding violations of the Sunshine Ordinance:

January

Mabbutt v. Dept. of Parks & Recreation: Continued.

February

Mabbutt v. Dept. of Parks & Recreation (continued from previous meeting): Matter referred to Task Force with recommendation to refer it to Ethics Commission due to willful violation.

Banks v. Dept. of Public Health: Complainant advised to make broad request for information. Matter concluded.

Anonymous Tenants v. Planning Dept.: Evidence from both sides found lacking. No further action.

Tsang v. Dept. of Building Inspection: Compliance found. Matter concluded.

Addario v. Arts Commission: Compliance found but certain aspects of the matter needed attention of Education, Outreach & Training Committee.

March

Starr v. City Attorney's Office: Referred to Task Force for referral to an enforcement entity to be determined, due to willful violation.

Kinnard v. Human Rights Commission: Compliance found except for non-timely response violation. No further action.

July

Ptashnaya v. Dept. of Aging & Adult Services: Referred to Task Force for referral to an enforcement entity to be determined, due to willful violation.

Dumont v. Recreation & Parks Dept.: Compliance found. Matter concluded.

Hartz v. Police Commission: Continued.

Respectfully submitted,
Allyson Washburn, Chair

Sunshine Ordinance Task Force Education, Outreach & Training Committee 2009-10 Annual Report

The Education Outreach & Training Committee (EOTC) is active on several fronts as it pursues its mission to communicate the precepts of open government to City departments and the residents of San Francisco.

The EOTC comprises five members: Chair Hanley Chan, Sue Cauthen, Hope Johnson, Suzanne Manneh and Marjorie Ann Williams. Ms. Johnson on July 1 replaced Doyle Johnson, who is no longer on the Task Force. Mr. Johnson consistently showed genuine dedication to the work of the Committee and the full Task Force.

The EOTC normally meets on the second Thursday of each month at 4 p.m.

The EOTC works with City departments on compliance issues. It explains the Sunshine Ordinance to community groups and government entities. It contacts local news media to acquaint them with open government issues. And it has proposed initiating a Sunshine Award program.

OUTREACH: In 2009, the EOTC took on a new function: working with City departments found in violation of the Sunshine Ordinance. The goal is to bring them into voluntary compliance and avoid punitive measures.

We are pleased to report a high degree of success. A notable example is the Historic Preservation Commission, which upgraded its minutes to conform to the Sunshine Ordinance by providing a brief summary of each public comment.

Other groups pursuing voluntary compliance with Sunshine law at the behest of the EOTC include the Planning Department, the Public Utilities Commission, Shanti, the Shelter Monitoring Committee, the Mayor's Office of Economic & Workforce Development, the SF HIV Health Services Planning Council, and the Arts Commission, among others.

Recently, the EOTC proposed a program of Sunshine awards. We anticipate that the project will encourage government entities to undertake full compliance with open government precepts, following both the spirit and the letter of the law. We believe our awards will draw more attention to the Sunshine Ordinance and the many positive features of participatory democracy.

EDUCATION: In pursuing our charge to transmit the principles of open government to the public, the Committee was effective on two fronts: (1) presentations to community and government groups, and (2) development and distribution of educational materials.

The EOTC has met with such diverse groups as Police Department Community Relations teams, Shanti, the Mayor's Office of Economic & Workforce Development, the SF HIV Health Services Council and North Beach Neighbors. We are set to appear before the Shelter Monitoring Committee, as well as the Coalition for San Francisco Neighborhoods, a 35-member

umbrella group. Once amendments to the Ordinance are in place, we anticipate a lively business explaining the new rules to the public.

We have also developed a brochure to explain the Sunshine Ordinance and its administration to the public, including tips on how to file a Sunshine complaint and other helpful facts. With the assistance of Yerba Buena Promotions, we created a compact, full-color handout on glossy paper, titled "We Love Sunshine in SF." We also helped the Public Utilities Commission's revise its government procedures to ensure compliance.

The EOTC would be aided immeasurably by the presence of a Deputy City Attorney at our meetings. Economy moves within the City Attorney's office have eliminated our ability to rely on a legal voice to assist us as we deliberate.

We are also hampered when an informed representative from a City department does not attend our meetings, a requirement under Section 67.21(e) of the Sunshine Ordinance. Failure to appear makes it impossible for us to pursue voluntary compliance with Task Force findings.

Nonetheless, the EOTC is encouraged by the positive response to our efforts from both City government and the general public. We welcome the opportunity to continue fostering open government.

Respectfully submitted,
Hanley Chan, Chair
Sue Cauthen, Immediate Past Chair

Sunshine Ordinance Task Force Rules Committee 2009-10 Annual Report

The Rules Committee's job is to set guidelines to help the Task Force meet its missions of monitoring the effectiveness of the Sunshine Ordinance; recommending revisions to the Ordinance; and helping City entities such as policy bodies and departments to comply with the Ordinance.

The Rules Committee is dormant; Task Force Chair Richard Knee has stated it will be reactivated when necessary.

Toward the end of his service on the Task Force in mid-2010, Committee Chair Doyle Johnson proposed what he envisioned as a low-cost marketing campaign aimed at generating Sunshine awareness among young adults and to encourage their participation in the political process.

The campaign would include production of printed materials for distribution at major city festivals, street fairs, park events, etc.; use of online resources such as social networking sites and the City's own website; and an online newsletter.

These goals could be met by finding sponsors such as green printers and online media; obtaining free printing in exchange for tax breaks and publicity; getting volunteers or interns to pass out handbills and other materials; getting interns to create campaign graphics designs; and distributing a monthly Task Force newsletter, in electronic and print versions, to City entities to make officials aware of their Sunshine responsibilities.

Respectfully submitted,
Richard A. Knee, Task Force Chair